

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA PRIORITY

C O N F I D E N T I A L STATE 187654

E.O. 11652: N/A

TAGS: ETRD, RP, TW, KS

SUBJECT: COTTON CONTRACTS - YUPANGCO

REF: (A) MANILA 10221 (B) STATE 181076 (C) MANILA
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1. EMBASSY NOTED (REFTEL C) THAT T'O ELEMENTS DISTINGUISHED
YUPANGCO CONTRACTS: (1) SHORT QUALITY CHARGE AGAINST
CIEC AND (2) CIEC FEBRUARY OFFER TO AMEND CONTRACTS. EACH
OF THESE ELEMENTS WILL BE DISCUSSED IN TURN.

2. SHORT QUALITY CHARGE: BACKGROUND OF PROBLEM IS AS
FOLLOWS: FIRST SHIPMENT OF 474 BALES TOOK PLACE IN MARCH
1974. YUPANGCO ASKED FOR ARBITRATION ON QUALITY CLAIM, CLAI
WAS SUSTAINED IN FEBRUARY 1975 AND SHIPPER PAID ARBITRATION
AWARD OF \$930.00 WHICH MILL REFUSED TO ACCEPT. AWARD
AMOUNTED TO LESS THAN FOUR TENTHS OF A CENT PER POUND, WHICH
BY ANY MEASURE IS SMALL. SECOND TWO LOTS OF 474 BALES AND
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469 BALES WERE SHIPPED MAY 30, 1974 AND ARRIVED JULY 30,
1974. YUPANGCO HAS NEVER ASKED FOR ARBITRATION ON THIS
COTTON AND DID NOT MENTION QUALITY PROBLEMS TO SHIPPER UNTIL
NOVEMBER 20, 1974. MUCH LATER, YUPANGCO BROUGHT SUIT IN

PHILIPPINE COURTS AGAINST CIEC CLAIMING QUALITY OF COTTON IN THESE TWO LOTS DID NOT MEET CONTRACT SPECIFICATION. IN

ADDITION, AND MORE TO THE POINT, YUPANGO CITES PENDING COURT CASE AS REASON FOR NOT OPENING L/C'S FOR 7500 BALES CONTRACTED FROM CIEC AND LISTED IN ANNEX.

3. OUR POSITION IS AS FOLLOWS:

(A) FIRST SHIPMENT OF 474 BALES: CIEC HAS FULLY LIVED UP TO ITS OBLIGATIONS BY PAYING THE ARBITRATION AWARD. IT IS ALSO IMPORTANT, IN CONTEXT OF YUPANGCO'S CLAIM OF BAD FAITH ON SHIPPER'S PART, THAT CLAIM IS VERY SMALL.

(B) SECOND SHIPMENT OF 474 AND 469 BALES: HERE WE HAVE NOTHING BUT YUPANGCO'S UNSUBSTANTIATED CLAIM THAT QUALITY WAS SHORT. ALSO, AS STATED REFTTEL D, IF SAMBLES ARE DRAWN UNDER CORRECT ARBITRATION PROCEEDURES, CIEC IS WILLING AND HAS AFFIRMED ITS WILLINGNESS TO SUPMIT CLAIM TO ARBITRATION NOW. WE BELIEVE ALL EVIDENCE INDICATES THAT YUPANGCO INITIATED COURT CASE (RATHER THAN USING ARBITRATION PROCEEDURE) ON QUALITY CLAIM TO ESTABLISH RATIONALIZATION FOR REFUSING TO OPEN LETTERS OF CREDIT ON THE 7500 BALES LISTED ON ANNEX. THE TIMING OF YUPANGCO'S COMPLAINT, MILL'S REFUSAL TO USE NORMAL ARBITRATION PROCEEDURE, AND DELAY IN UNDERTAKING COURT CASE ALL BEAR OUT THIS INTERPRETATION.

(C) 7500 BALES ON ANNEX: CIEC HAS OFFERED AND CONTINUES TO OFFER 100 PERCENT SAMPLE INSPECTION BEFORE SHIPMENT, WITH CIEC ABSORBING COST OF INSPECTION. IN SUM, WE BELIEVE CIEC POSITION ON THESE THREE SHIPMENTS IS VERY FAIR AND COMPLETELY COVERS ANY OBJECTION YUPANGCO MAY HAVE ON GROUNDS OF QUALITY. CIEC WILL FURNISH ANY DOCUMENTATION WHICH EMBASSY, DBP OR MILL DESIRES ON THESE POINTS.

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4. WE HAVE AGAIN CONSIDERED IN GREAT DETAIL CIEC'S FEBRUARY OFFER TO AMEND YUPANGCO'S CONTRACTS. IF BRIEF, CIEC OFFERED TO DELIVER HIGHER GRADE OF COTTON FOR SPECIFIED CONTRACT PRICE AND TO ABSORB CARRYING CHARGES. CARRYING CHARGES ISSUE IS SETTLED SINCE, AS EMPASSY IS A'ARE, CIEP HAS AGREED TO ABSORB THOSE CHARGES.

5. WITH REGARD TO CIEC'S OFFER OF HIGHER GRADE OF COTTON, AS TIME PASSED, THREE NEW FACTORS CAME INTO PLAY: 1). CARRYING CHARGES INCREASED, 2) COST TO CIEC OF OFFER (IN ADDITION TO CARRYING CHARGES) INCREASED PY APPROXIMATELY \$150,000 DUE TO MARKET CHANGES IN RELATIVE COST OF DIFFERENT GRADES OF COTTON, AND 3)SSURANCES 'ERE SIGNED.

OFFER OF HIGHER QUALITY COTTON WAS DISADVANTAGEOUS TO SHIPPER WHEN MADE IN FEBRUARY, AND DUE TO MARKET SHIFTS MENTION

ED ABOVE, COST TO SHIPPER HAS RISEN BY APPROXIMATELY \$150,000. SHIPPER MAINTAINS, IN ACCORD WITH TRADE PRACTICE, THAT OFFER WAS GOOD FOR 24 HOURS, AND HE IS NOT NOW WILLING TO RENEW IT IN LIGHT OF MARKET SHIFT AND ADDITIONAL CARRYING CHARGES.

6. WE BELIEVE IT VERY IMPORTANT THAT ASSURANCES BE APPLIED EVEN-HANDEDLY. HAD YUPANGCO ACCEPTED CIEC'S OFFER AND AMENDED CONTRACT BEFORE ASSURANCES WERE SIGNED, WE WOULD NEVER HAVE ENTERTAINED CIEC CONTENTION THAT ASSURANCES NULLIFIED AMENDMENT. NO;, AFTER ASSURANCES HAVE BEEN SIGNED, WE DO NOT SEE HOW WE, EMBASSY, DBP, OR YUPANGCO CAN WITH ANY DEGREE OF FAIRNESS PRESSURE CIEC TO RENEW AN OFFER MADE (AND REFUSED) IN FEBRUARY.

7. WE BELIEVE CIEC POSITION ON QUALITY PROBLEMS IS FORTHCOMING: PAST SHORT SHIPMENT OR SHIPMENTS HAVE BEEN COVERED AND PRE-INSPECTION GUARANTEES THAT NO SHORT SHIPMENT OR QUALITY DISCREPANCY WILL OCCUR ON 7500 BALES. THIS SHOULD PROVIDE EMBASSY SUFFICIENT AMMUNITION TO PRESS GOP HARD ON THIS ISSUE. DBP'S INDIRECT PRESSURE ON CIEC TO RENEGOTIATE YUPANGCO CONTRACTS BASED ON FEBRUARY OFFER IS INEQUITABLE AND THIS ARGUMENT SHOULD BE STRONGLY MADE TO DBP. KISSINGER

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